

1 Beverly Thorp
2 c/o Box 2070
3 Sunnyvale CA 94087
4 FC005
5
6

FILED

2008 APR 17 P 2:28

7 **UNITED STATES DISTRICT COURT**
8 Northern District of California
9 San Jose Division
10
11 *clb*

RICHARD W. WIERING
CLERK
U.S. DISTRICT COURT
NO. DIST. OF CA. S.D.
[Signature]

12
13 **Plaintiffs:**

14
15 Beverly Thorp
16

17 v.

Case No. C 08 – 01449 JF

18
19 **Defendant:**

20
21 Judge Robert Attack, et al.
22 Superior Court of Santa Cruz
23 701 Ocean St.
24 Santa Cruz CA 95060
25

26 Does 1 through 99
27
28
29

Notice of Motion and a
Motion For a
Default Judgment

30 **Notice of Motion and a Motion For a Default Judgment**
31

32
33 **PLEASE TAKE NOTICE** on Friday, 20 June 2008, at 9:00 AM, or as soon thereafter as
34 the matter can be heard in Department 3, fifth floor, in the United State District Court of
35 Northern California, Santa Clara County, located at 280 S. First Street, San Jose,
36 California. The Plaintiff will move the Court for a Default Judgment against the Defendant
37 and Does 1 through 99.
38

39 I, Beverly Ann Thorp, a flesh-and-blood woman, a human being, an Authorized
40 Representative and Agent for BEVERLY THORP, sui juris, Ingenuitas juris et de jure, a
41 State National citizen and NOT a Federal Zone citizen. Under a special appearance of
42 Propria Persona, Without Prejudice, under the Uniform Commercial Code, UCC 1-207,

UCC 1-103, and UCC 3-402, have first hand knowledge of the facts stated herein, and being competent in mind and body to testify, declare and affirm the facts stated herein are true correct, complete and admissible as evidence, in all material fact, not misrepresented and are made pursuant to the Laws of the Union of States of America and the California Republic.

UCC 1-207 Sufficiency of reservation.

Any expression indicating any intention to preserve rights is sufficient, such as "without prejudice," "under protest," "under reservation," or "with reservation of all our rights."

The making of a valid reservation of rights preserves whatever rights the person possesses and prevents the loss of such right by application of concepts of waiver or estoppel.

UCC 1-103 Common law.

The UCC Code is "Complementary" to Common Law which remains in force except where displaced by the Code.

All statutes should be construed in harmony with the Common Law unless there is a clear legislative intent to abrogate Common Law. ... "The UCC Code cannot be read to preclude a Common Law action."

The essence of procedural due process is fundamental fairness. de Koevend v. Board of Educ., 688 P.2d 219, 227 (Colo. 1984). The parties have a right to be heard when their rights are affected, and in order to enjoy this right they must first be notified. City of Chicago v. American National Bank & Trust Co. (1988), 171 Ill. App. 3d 680, 688, 121 Ill. Dec. 608, 525 N.E.2d 915. Due process requires, at a minimum, notice and the opportunity for a meaningful hearing before an impartial tribunal. Mathews v. Eldridge, 424 U.S. 319, 333, 348-49 (1976).

Statement of Fact

On 14 March 2008, a Summons and Complaint was filed and sent by Certified Mailed to the Defendant Judge Atack and Does 1 through 99 in conformity with California and Federal law.

The summons sent to the Defendant(s) clearly states:

"YOU ARE HEREBY SUMMONED and required to serve upon [the] Plaintiff an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, [a] judgment by default will be taken against you for the relief demanded in the complaint."

The Summons was signed by a court clerk, Betty Walton, and stamped with the Court's Seal, dated 14 March 2008. A signed copy of the Proof of Delivery of the Certified Mail of the Summons and Complaint to the Defendant(s) was mail by regular mail to the Court.

On 17 March 2008, Teresa Vega signed the Certified Mail Return Receipt Signature Card for the Plaintiff's Summons and Complaint sent to the Defendant(s). A copy of the Return Receipt Signature Card and the Certified Mail Receipt is in Exhibit 1, for your convenience.

The Federal District Court applied the Common Law Mailbox Rule, which provides proof of mailing of a properly addressed communication bearing proper postage creates a non-rebuttable presumption the communication was received. The Common Law Mailbox Rule has taken precedence since 1502. *Sorrentino v. United States*, 199 F. Supp. 2d 1068, 1078 (D. Colo. 2002).

A letter, package, or other mailable matter is "mailed" when it is properly addressed, stamped with the proper postage, and deposited in a proper place for receipt of mail. *Texas Cas. Ins. Co. v. McDonald*, Tex. Civ. App. 269 S. W. 2d 456, 457.

1 In contract law, unless otherwise agreed or provided by law, acceptance of offer is effective
2 when deposited in mail if properly addressed. *Liquorama Inc. v. American National Bank*,
3 86 Ill App. 3d 974, 41 Ill Dec. 951, 953, 408 N. E. 2d 373, 375.

4
5 If the Federal Mailbox Rule is applied, the Plaintiff's Summons and Complaint would have
6 been mailed and received by the Defendant(s) on the 14th of March 2008. This would have
7 made the Defendant's answer due on the 3rd of April 2008.

8
9 If the Mailbox Rule is applied on the date (17 March 2008) the Defendant(s) received the
10 Plaintiff's Summons and Complaint, then this would have made the Defendant's answer
11 due on the 6th of April 2008.

12
13 Today is the 17th of April 2008 and the Defendant's answer still has NOT been received.
14 This is 33 days after the Plaintiff's Summons and Complaint was filed, and it is long after
15 the 20 days generously allowed.

16
17 The bottom line of all of this is, the Defendant(s) are in **DEFAULT** for failure to answer the
18 Plaintiff's Summons and Complaint as required by law and within the required time period.
19 The time to have preformed has now **EXPIRED**, and the Defendant(s) are now in
20 **DEFAULT**.

21
22 This Motion for a Default Judgment against the Defendant Judge Attack and Does 1
23 through 99 for failure to answer the Plaintiff's Summons and Complaint which ought to
24 have been done, is now being sought. *Town of Milton v. Bruso*, 111 Vt. 82, 10 A. 2d 203,
25 205.

26
27 Pursuant to Rule 55(a) of the Federal Rules of Civil Procedure the Defendant Judge Attack
28 and Does 1 through 99 have failed to file the required pleading or answer the Plaintiff's
29 Summons and Complaint or otherwise defend the above-captioned action.
30

1 Specifically, the Defendant Judge Attack and Does 1 through 99 have failed to perform a
2 legal duty. *Easterwood v. Willingham*, Tex. Civ. App., 47 S. W. 2d 393, 395.

3
4 The Defendant Judge Attack and Does 1 through 99 have failed to contest any fact or law
5 in this case.

6
7 Fraud and deceit may arise from silence where there is a duty to speak the truth, as well
8 as from speaking an untruth. *Morrison v. Coddington*, 662 P. 2d. 155, 135 Ariz. 480(1983).

9
10 Silence can only be equated with fraud when there is a legal and moral duty to speak or
11 when an inquiry left unanswered would be intentionally misleading. We cannot condone
12 this shocking conduct... This sort of deception will not be tolerated and if this is routine it
13 should be corrected immediately. *Norman v. Zieber*, 3 Or at 202-03; *U.S. v. Prudden*, 424
14 F.2d. 1021; *U.S. v. Tweel*, 550 F. 2d. 297, 299, 300 (1977).

15
16 Judge Attack and Does 1 through 99 failure to answer the Plaintiff's Summons and
17 Complaint is tacit consent by them to the validity of these documents and the statements
18 of truths stated therein and for the removal of any controversy without a trial as there are
19 no disputes between the parties to either the material facts or from any inferences to be
20 drawn from these undisputed facts, nor is there any dispute in the question of the laws
21 involved and/or applied. *American State Bank of Killdeer v. Hewson*, N. D., 411 N. W. 2d
22 57, 60.

23
24 The Defendant and Does 1 through 99 are not infants or incompetent persons, nor are they
25 in the military service.

26
27 The Defendant and Does 1 through 99 have been **DEFAULTED** for failure to answer the
28 Plaintiff's Summons and Complaint in the required allotted time.

29
30 This Court has jurisdiction over the subject matter of this case and over the Defendants.

1 The venue as to the Defendants in the District Court of Northern California is proper.

2
3 The Plaintiff has the authority to seek the relief which is being sought.

4
5 **The Relief Requested by the Plaintiff**

6
7 1. I request the United States District Court **Declare Judge Attack and All of the Does 1**
8 **to 99 to be in Permanent Default.**

9 2. I request the United States District Court **DISQUALIFY Judge Attack IMMEDIATELY**
10 **and PERMANENTLY.**

11 3. I request the United States District Court **Declare ALL of Judge Attack's Rulings and**
12 **Judgments to be NULL and VOID** as a result of Judgment.

13 4. I request the United States District Court **Declare ALL of Judge Burdick's Rulings**
14 **and Judgments to be NULL and VOID** as a result of Judgment.

15 5. I request the United States District Court to **Declare Judge Attack and Judge Burdick**
16 **and All of the Does 1 to 99 to have operated as individuals NOT** in an official
17 capacity representing the State of California in their handling of Santa Cruz County
18 Superior Case, CV 155983, and each individual has yielded up any claim to
19 immunity from prosecution.

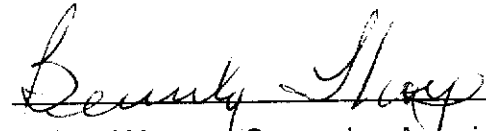
20 6. I request the United States District Court to allow me, the Plaintiff, to submit at a later
21 date damage claims and expenses for each above named individuals who are
22 named jointly, severally, and individually.

23
24
25
26 Further, Beverly Thorp saith naught.

Without Prejudice, UCC 1-207, UCC 1-103, & UCC 3-402

17 April 2008

Beverly Thorp, an Authorized Representative and Agent



, In Propria Persona Sui Juris
A Free Woman, Sovereign American, with Constitutional Rights intact UCC § 3-402 (b)(1)
De Jure Soti, Jus Sanguinis, Coronea, Teste Meipso.

Reserving All Rights, Giving Up None.

Notice to agent is notice to principal. Noted to principal is notice to agent.

All Rights Reserved (UCC1-308)

PROOF OF SERVICE / DELIVERY

(CCP § 413.10 – 416.90)

I am a citizen of the California Republic. I am over the age of eighteen years. I am able and willing to testify to the facts stated herein.

I served the following document(s) on all appropriate parties in this action by placing a copy of the said document(s) in a sealed envelope, with postage attached, and deposited it with the U.S. Postal Service.

● **Notice of Motion and a Motion For A Default Judgment (FC005)**

X I caused such envelope to be deposited in the mail with the U.S. Postal Service. The envelope was mailed with postage thereon fully prepaid. Mailed to each of the following:

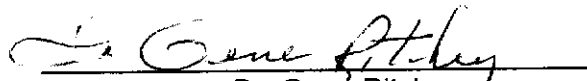
Judge Robert Atack, 701 Ocean St., Santa Cruz CA 95060.
Judge Paul Burdick, 701 Ocean St., Santa Cruz CA 95060.
Troy Overton, 455 Golden Gate Ave. Ste 11000, San Francisco CA 94102

___ The Proof of Service / Delivery signed by the authorized courier is on file and is available upon demand.

I am readily familiar with the practice of collection and processing correspondence for mailing. The above document(s) were deposited with the U.S. Postal Service within the time frame prescribed by law.

I declare, under penalty of perjury of the laws of the State of California the foregoing is true and correct.

17 April 2008


Dr. Gene Ritchey
c/o Box 2070
Sunnyvale CA 94087

Exhibit

1

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

JUDGE ROBERT ATTACK
701 OCEAN ST.
SANTA CRUZ CA 95060

F0001

7004 1160 0002 4819 1907

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly)

B. Date of Delivery

Teresa Vega

C. Signature

X Teresa Vega

D. Is delivery address different from item 1?

If YES, enter delivery address below:

☐ Agent☐ Addressee☐ Yes☐ No

USPS

3. Service Type

☒ Certified Mail ☐ Express Mail☐ Registered ☐ Return Receipt for Merchandise☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

PS Form 3811, July 1999

Domestic Return Receipt

102595-99-M-1789

U.S. Postal Service™

CERTIFIED MAIL™ RECEIPT

(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

SANTA CRUZ CA 95060

OFFICIAL USE

Postage	\$	\$4.60	0271
Certified Fee		\$2.65	03
Return Receipt Fee (Endorsement Required)		\$2.15	Postmark Here
Restricted Delivery Fee (Endorsement Required)		\$0.00	
Total Postage & Fees	\$	\$9.40	03/14/2008

Sent To

JUDGE ROBERT ATTACK



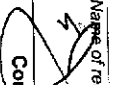
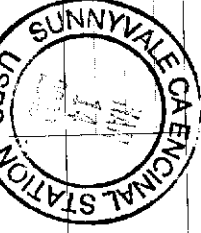
Street, Apt. No.,
or PO Box No. 701 OCEAN ST.

City, State, ZIP+4 SANTA CRUZ CA 95060

PS Form 3800, June 2002

See Reverse for Instructions

7004 1160 0002 4819 1907

Name and Address of Sender		Check type of mail or service:		Affix Stamp Here (If issued as a certificate of mailing, or for additional copies of this bill)		Postmark and Date of Receipt		Handling Charge		Actual Value		Insured Value		Due Sender if COD		DC Fee		SC Fee		SH Fee		RD Fee		RR Fee			
BEVERLY THOMP c/o Box 2070 SUNNYVALE CA 94087		<input type="checkbox"/> Certified <input type="checkbox"/> COD <input type="checkbox"/> Delivery Confirmation <input type="checkbox"/> Express Mail <input type="checkbox"/> Insured		<input type="checkbox"/> Recorded Delivery (International) <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Signature Confirmation																							
Article Number 1. FC001		Addressee (Name, Street, City, State, & ZIP Code) Judge Paul Buddick 701 Ocean St. Santa Cruz CA 95060		Postage		Fee		Handling Charge		Actual Value		Insured Value		Due Sender if COD		DC Fee		SC Fee		SH Fee		RD Fee		RR Fee			
2. Proof of Mailing-FC001		U.S. District Court 280 S. 1st St San Jose CA 95113																									
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Total Number of Pieces Listed by Sender 2		Total Number of Pieces Received at Post Office 2		Postmaster, Per (Name of receiving employee) 																							

Complete by Typewriter, Ink, or Ball Point Pen

See Privacy Act Statement on Reverse